

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

ORIGINAL

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAUS CORPUS BY A PERSON IN STATE CUSTODYOCT 13 2022
at 4 o'clock and 30 min. M
John A. Mannle, Clerk
filed copy mail 10/14/22

United States district Court		District: District Court of Hawai'i	
Name (under which you were convicted): <u>Michael Ventrella</u>		Docket or Case No: CV 22 00448 LEK RT	
Place of Confinement: Saguaro Correctional Center Eloy, Arizona		Prisoner No: <u>A5006117</u>	
Petitioner (include the name under which you were convicted) <u>Michael Ventrella</u>		Respondent (authorized person having custody of petitioner) Shawn Wead, Warden	
v.			
The Attorney General of the State of: Hawai'i			

Received By Mail
Date OCT 13 2022

PETITION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: Circuit Court of the third circuit, State of Hawai'i.
777 Kilauea Avenue Hilo Hawai'i 96720-4212
- (b) Criminal docket or case number (if you know): (Cr. No. 17-531) (Cr. No. 3CPC-17-0000531)
2. (a) Date of judgment of conviction (if you know): February 20, 2018
- (b) Date of sentencing: April 25, 2018
3. Length of sentence: 20 Years
4. In this case, were you convicted on more than one count or of more than one crime? Yes [] No ☒
5. Identify all crimes of which you were convicted and sentenced in this case: One count of Promoting a Dangerous Drug in the First Degree.

6. (a) What was your plea? (Check one)
(1) Not guilty [] (3) Nolo contendere (no contest) []
(2) Guilty ☒ (4) Insanity plea []
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead not guilty to? _____

- (c) If you went to trial, what kind of trial did you have? (Check one)
Jury [] Judge only []
7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?
Yes [] No ☒
8. Did you appeal from the judgment of conviction?
Yes [] No ☒
9. If you did appeal, answer the following:
(a) Name of court: _____
(b) Docket or case number (if you know): _____
(c) Result: _____
(d) Date of result (if you know): _____
(e) Citation to the case (if you know): _____
(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Circuit Court of the Third Circuit State of Hawai'i 777 Kilauea Avenue 96720-4212

(2) Docket or case number (if you know): Case No. 3CPN-19-0000003

(3) Date of filing (if you know): November 18, 2019

(4) Nature of proceeding: Hawai'i Rules of Penal Procedure Rule 40 Petition

(5) Grounds raised: (1)The Hawai'i Paroling Authority violated Alleyne v. United States when it issued Petitioners minimum term sentence.

(2) The issuance of Petitioners minimum term was in violation of HRS 706-669(8)

(3) The issuance of Petitioners minimum term was in violation of HRS 706-669(6)

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result: Denied

(8) Date of result (if you know): June 15, 2020.

(b) If you filed any second petition, application or motion give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: The issuance of Petitioners minimum term sentence by the Hawai'i Paroling Authority was in violation of Petitioners Due Process and the 5th, 6th, 8th and 14th Amendment to the U.S. Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Hawaii Paroling Authority violated Petitioners Due process by not submitting to a jury the elements that increased the floor of the mandatory minimum term set by the Hawaii Paroling Authority in direct contravention of clearly established precedent set by the United States Supreme Court.

(b) If you did not exhaust your state remedies on Ground One, explain why:

Remedies were exhausted to the Hawai'i Supreme Court.

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: No direct Appeal. Pled guilty and Hawai'i Paroling Authority held a minimum term hearing after sentencing.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Hawai'i Rules of Penal Procedure Rule 40 Petition

Name and location of the court where the motion or petition was filed: The Circuit Court of the State of Hawai'i 777 Kilauea Avenue 96720-4212

Docket or case number (if you know): (Cr. No. 3CPC-17-0000531), (Case No. 3CPN-19-0000003)

Date of the court's decision: June 15, 2020

Result (attach a copy of the court's opinion or order, if available): Denied

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Intermediate Court of Appeals
State of Hawai'i

Docket or case number (if you know): CAAP-20-0000448

Date of the court's decision: June 20, 2022

Result (attach a copy of the court's opinion or order, if available): Appellate Court Affirmed
"Order" denying Rule 40 Petition

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

Writ of Certiorary to the Hawai'i Supreme Court. SCWC-20-0000448.

GROUND TWO: Ineffective Assistance of Counsel. Abandonment of Counsel at Petitioners Hawai'i Rules
of Penal Procedure Rule 40 Petition hearing in violation of the 5th, 6th, and 14th Amendment to the United States Constitution

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

William Reece Jr. was ineffective during Petitioners Rule 40 hearing held on May 29, 2020. During the
the hearing Mr. Reece only showed up because he was "ordered" to do so. He had done no preparation,
Never spoken to Petitioner, never researched the issues, and didn't say a SINGLE WORD to defend
Petitioner at the hearing. Therefore clearly violating the United States Constitutional Rights afforded
Defendant's at Critical Stages of the criminal proceeding.

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____
Remedies exhausted to the Hawai'i Supreme

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative

remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

Ground two was Appealed to the Intermediate Court of Appeals CAAP-20-0000448.

Writ of Certiorari not accepted by the Supreme Court of the State of Hawaii SCWC-20-0000448

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the

highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

No

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: William Reece Jr.

(b) At arraignment and plea: William Reece Jr.

(c) At trial: Pled Guilty William Reece Jr. Represented me at the change of plea

(d) At sentencing: William Reece Jr.

(e) On appeal: None

(f) In any post-conviction proceeding: Petitioner proceeded Pro Se

(g) On appeal from any ruling against you in a post-conviction proceeding: _____
Petitioner proceeded Pro Se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* _____

My Petition is timely because my minimum term hearing was held on January 14, 2019 and I received my "Notice and order fixing minimum term of imprisonment" the first week of February 2019.

My Rule 40 Petition was filed on November 18, 2019 which would stop the clock. Petitioner timely filed his Appeal to the Hawai'i Court of Appeals and his Writ of Certiorari to the Hawai'i Supreme Court.

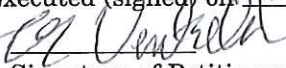
The time for which a properly filed Application for post conviction relief or other collateral review shall not be counted.

Therefore, petitioner asks that the Court grant the following relief: Based on the foregoing facts, Petitioner respectfully requests this Honorable Court to vacate his minimum term sentence and order a new minimum term hearing before the HPA, to be held in full compliance with all relevant procedures, statutes, and case law. Or schedule an evidential hearing.
or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on October 10, 2022 (month, date, year).

Executed (signed) on 10/10/22 (date).


Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____